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GOVERNOR

STATE OF FLORIDA

## Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

April 19, 1999

Ms. Maureen Bornholdt  
Department of the Interior  
Minerals Management Service  
Mail Stop 4024  
381 Elden Street  
Herndon, VA 20170-4817

Attention: Rules Processing Team

Dear Ms. Bornholdt:

Pursuant to Presidential Executive Order 12372, Governor's Executive Order 95-359, the Coastal Zone Management Act and the National Environmental Policy Act (NEPA), as amended, the State of Florida has coordinated a review of the Notice of Proposed Rulemaking prepared by the Minerals Management Service (MMS) to amend 30 CFR 250.203(f), 250.204(i) and 250.204(j).

The proposed rule would allow states to receive draft environmental impact statements, prepared pursuant to NEPA, as part of their review for coastal zone consistency. Currently, due to conflicting regulations between the Outer Continental Shelf Lands Act (OCSLA) and the Coastal Zone Management Act (CZMA), state CZMA consistency review of OCS plans must be concluded prior to reviewing environmental impact statements (EIS), which may be required under NEPA.

Current MMS regulations do not provide for a logical integration between the three federal acts or meet the intent of the CZMA requirement for the consistency decision to be based on consideration of complete data and information. This is a significant problem because an EIS is developed to comprehensively describe the affected environment; the alternatives including the proposed action; and, environmental consequences including direct, indirect and cumulative effects of proposed activities.

For many years the state has expressed concerns that 30 CFR 250.204 provides for the consistency review of a Development and Production Plan (DPP) to be conducted well in advance of the preparation and review of the environmental impact statement. Under this process, the state is expected to make a consistency finding without complete data and information on which to base its decision. This recently affected Florida when Chevron U.S.A. Production Company submitted a DPP offshore north Florida. Under the OCSLA, the Secretary

Ms. Maureen Bornholdt

April 19, 1999

Page 2

of the Interior declared the DPP a major federal action, thus requiring the development of an EIS under NEPA. While the MMS implementing regulations reiterate the need for an EIS to be developed, they specifically state that the requirement for an EIS does not affect the time frame under which a state has to complete its CZMA consistency review [30 CFR 250.204 (j)]. Under these regulations, the state received the DPP in August 1997 and was required to complete the CZMA consistency review six months later. However, the EIS continues to be developed with the state expecting to receive the draft document this year.

The state commends MMS for recognizing this problem and pursuing efforts to correct discrepancies between the regulations. As noted in the Notice, the lack of an EIS in a state's CZMA review often contributes to state objections and a more contentious process. Amending the MMS regulations as proposed should assist in ensuring that states have the most comprehensive and current information on which to make consistency decisions. To further improve the consistency review process with OCS plans and activities, the following comments are offered.

While we recognize that the proposed changes to the MMS regulations bring them in accord with implementing CZMA regulations by requiring individual state coastal programs to specifically identify DEISs for OCS plans as "necessary data and information," this requirement is in direct conflict with the intent of NEPA. States should not be required to make a consistency decision on a DPP without an EIS, where one was required, since it is the principal supporting information that evaluates the impacts of the project. Further, in keeping with CEQ regulations, relevant federal decisions should be integrated with NEPA regardless of whether a state has equated necessary data and information with an EIS in its coastal management program. NEPA clearly requires that all environmental reviews be conducted through a concurrent and integrated process with other environmental review laws [40 CFR 1502.25(a)]. States should not have to rely on specific language in their CZMA programs to have available to them the most comprehensive and current information on which to make consistency decisions.

In addition, current MMS regulations prevent states from reviewing, certain permits for CZMA consistency which are issued after a plan's approval [e.g., pipeline permits, 30 CFR 250.204(t)]. In these cases, it is imperative that the same level of information required for these permits be included in either the individual plan or the NEPA document developed for the particular plan so that it is available to states for CZMA consistency review.

In accordance with 40 CFR 1502 and 1506, a federal consistency determination should be included at each stage of the NEPA process. NEPA regulations recognize that significant changes may occur between the publication of a DEIS and the final EIS. Specifically, 40 CFR 1503.4 notes that an agency's response to comments regarding the DEIS may require the modification of alternatives; the development and evaluation of new alternatives; and supplements, modifications or improvements to the analyses. Therefore, it is critical that states

Ms. Maureen Bornholdt  
April 19, 1999  
Page 3

be afforded the opportunity to review for CZMA consistency each individual stage of the NEPA process, especially when significant changes are made to the project or analyses. As with all other federal agency activities, Florida will continue to review the final EIS for consistency with its federally-approved coastal management program to ensure that issues and concerns raised at the DEIS review stage are adequately addressed. This should not affect the overall timing for MMS to review and approve the DPP.

MMS also requested comments on applicability of this revised process to pending applications. We recommend that the proposed procedures apply to pending applications as soon as possible. The discussion accompanying the proposed regulations recognizes that the current regulation is not well grounded in statute, has proven to be unworkable in practice, and that the Secretary has discretion to administer the OCS program with a flexible approach. Continuing to apply the current regulation under these circumstances seems inappropriate and counterproductive. Because the Chevron application as discussed earlier is pending, the proposed process should apply.

We appreciate the opportunity to provide comments on the Notice of Proposed Rulemaking and look forward to continue working with you on this important issue. If you have any questions regarding these comments, I can be contacted at (850) 488-5551.

Sincerely,



Lisa Polak Edgar  
Chief Policy Analyst

LPE/mcj